debtor's insolvency at the time of the preference the petition and adjudication in involuntary bankruptcy. The petition alleged that the defendant had received a preference, and the adjudication found that the bankrupt had been insolvent for four months preceding the filing of the petition. The defendant did not appear in the bankruptcy proceedings. The trial court ruled this evidence conclusive on the grounds that the proceedings were in a sense *in rem* and that all creditors were parties. *Held*, that the evidence is not conclusive against the defendant. *Gratiot State Bank* v. *Johnson*, U. S. Supreme Court, October Term, 1918, No. 148.

It is held that an adjudication, being *in rem*, determines the debtor's status as a bankrupt against everybody. *Michaels* v. *Post*, 21 Wall. (U. S.) 398, 428; *New Lamp Chimney Co.* v. *Ansonia Brass & Copper Co.*, 91 U. S. 656. The question of what other determinations, if any, will be *res judicata* has given rise to difference of opinion. See 1 REMINGTON, BANKRUPTCY, 2 ed., §§ 444, 445. Thus, a finding of insolvency has been held conclusive because it is *in rem* and because creditors are parties since they may appear under sections 18*b* and 59*f* of the Bankruptcy Act. (ACT OF JULY 1, 1898, c. 541, §§ 18*b*, 59*f*, 30 STAT. 544. ACT OF FEBRUARY 5, 1903, c. 487, § 6, 32 STAT. 797, 798.) *Cook* v. *Robinson*, 114 C. C. A. 505, 194 Fed. 785; *In re American Brewing Co.*, 50 C. C. A. 517, 112 Fed. 752. *Cf. Sheppard-Strassheim Co.* v. *Black*, 128 C. C. A. 147, 151, 211 Fed. 643, 647. *Contra*, *In re McCrum*, 130 C. C. A. 555, 214 Fed. 207; *Silvey & Co.* v. *Tift*, 123 Ga. 804, 51 S. E. 743. See *Mansen* v. *Williams*, 213 U. S. 453, 455. Parties in interest are considered creditors and are therefore allowed to appear. *Jackson* v. *Wauchula Mfg. & Timber Co.*, 144 C. C. A. 551, 230 Fed. 409; *In re Everybody's Store*, 125 C. C. A. 290, 207 Fed. 752. *Cf. In re Eureka Anthracite Coal Co.*, 197 Fed. 216. See 17 HARV. L. REV. 131. And such parties might similarly have been held bound. The principal case ends this confusion and establishes that only the condition of bankruptcy is, by the adjudication, binding on those not actually parties. This is the correct view, for the adjudication creates only the condition it decrees. Furthermore, section 59*f* merely provides for validating the petition. *In re Mackey*, 110 Fed. 355. See 23 HARV. L. REV. 479. Section 18*b* merely provides, as is pointed out in the principal case, that the creditors may, if they choose, protect themselves. Whether a finding is admissible in evidence, however, has been left open. It is submitted that it is not admissible, since a judgment, except so far as it may be *in rem*, affects only the parties or their privities. *Lewis* v. *Sloan*, 68 N. C. 557; *Silvey & Co.* v. *Tift*, *supra*.

BILLS AND NOTES — PURCHASER FOR VALUE WITHOUT NOTICE — RIGHTS OF A PAYEE AGAINST AN IRREGULAR INDORSER. — The defendant indorsed an incomplete note for the accommodation of the maker, which was later improperly filled in by the latter and transferred to the plaintiff, the payee. The note was dishonored at maturity and the plaintiff sues the defendant as indorser. *Held*, that he may recover. *Johnston* v. *Knipe*, 105 Atl. 705 (Pa.).

Under the Bills of Exchange Act, a payee is not a holder in due course. *Herdman* v. *Wheeler*, [1902] 1 K. B. 361. See BRANNAN, NEG. INST. LAW, § 14 (*c*). In a later case, however, the English court allowed recovery by a payee on the theory that the maker was estopped from setting up that a third party had filled up the blanks in excess of his authority. *Lloyd's Bank* v. *Cooke*, [1907] 1 K. B. 794. The theory of estoppel does not extend to the case where the blanks were filled in without *any* authority from the maker. *Smith* v. *Prosser*, [1907] 2 K. B. 735. Under the Negotiable Instruments Law, a payee has also been held not a holder in due course. *Vander Ploeg* v. *Van Zuuk*, 135 Iowa, 350, 112 N. W. 807. But the New York and Massachusetts courts have declined to follow the latter decision, giving "negotiation" a broader interpretation than is warranted by a literal construction of

the act. *Boston Steel & Iron Co.* v. *Steuer*, 183 Mass. 140, 66 N. E. 646; *Brown* v. *Rowan*, 91 N. Y. Misc. 220, 154 N. Y. Supp. 1098. Strangely, however, the New York court has held that transference by a thief is not such a "negotiation" as will constitute a payee a holder in due course. *Empire Trust Co.* v. *Manhattan Co.*, 97 Misc. 694, 162 N. Y. Supp. 629. See 30 HARV. L. REV. 515. The question arises for the first time in Pennsylvania, and the court also repudiates the Iowa decision. The fact that the defendant was an irregular indorser and not the maker, as was true in all the preceding cases, can create no basis for any substantial distinction. See also *Thorp* v. *White*, 188 Mass. 333, 74 N. E. 592; *Liberty Trust Co.* v. *Tilton*, 217 Mass. 462, 105 N. E. 605.

CARRIERS — DUTY TO TRANSPORT — LIABILITY OF CARRIER FOR ACT OF FOREIGN AGENT IN ACCORDANCE WITH FOREIGN LAW. — The defendant, a common carrier running freight steamers between the United States and Shanghai, China, employed as agent in Shanghai a British firm, which was, by English law, forbidden to deal with parties on the British "black list." In 1916 the plaintiff, an American citizen, agent for German subjects and therefore on the "black list," tendered goods for carriage to the defendant's agent. In accordance with his legal duty, the latter refused to accept them for transportation. The plaintiff brought an action to recover for this refusal. *Held*, that the defendant is liable. *Swayne* v. *Hoyt*, 255 Fed. 71.

One of the duties of a common carrier is to receive for carriage, subject to reasonable limitations, any goods offered it, the nature of which corresponds to those which it professes to carry. *Ill. Cent. R. R. Co.* v. *Frankenberg*, 54 Ill. 88. Accordingly, the refusal to serve the plaintiff, unless justified, rendered the defendant liable. A common carrier must serve without discrimination every member of the class it professes to serve. *Pittsburg, etc. Ry. Co.* v. *Morton*, 61 Ind. 539; *Brown* v. *Memphis & C. Ry. Co.*, 5 Fed. 499. See WYMAN, PUBLIC SERVICE CORPORATIONS, § 344. Refusal to serve must be based on the possibility of performing the service, not on the character of the shipper. See WYMAN, PUBLIC SERVICE CORPORATIONS, § 550. The mere refusal of a carrier's employees to serve does not relieve the carrier of liability. *Seasongood, etc. Co.* v. *Tennessee, etc. Transp. Co.*, 21 Ky. L. Rep. 1142, 54 S. W. 193. On the other hand, subserviency to governmental authority is a defense. *Palmer* v. *Lorrillard*, 16 Johns. 348; *Phelps* v. *Ill. Cent. R. R. Co.*, 94 Ill. 548. In the principal case, however, the law bound the agent alone and not the defendant principal. It is submitted that the defendant's duty to render reasonable service to the public required the maintenance of a competent agent. It was reasonable to expect the situation which arose, and the defendant should have provided for it. *St. Louis, etc. Ry. Co.* v. *State*, 85 Ark. 311, 107 S. W. 1180. Hence the incompetency of the agent was no excuse.

CONSTITUTIONAL LAW — DUE PROCESS — POLICE POWER — LIMITATION OF FEES OF EMPLOYMENT AGENCIES. — An ordinance limited fees of employment agents to five per cent of the first month's wages and board. An employment agent charged a larger fee for furnishing a clerical position, and was convicted of violating the ordinance. *Held*, that the conviction be reversed. *Wilson* v. *City & County of Denver*, 178 Pac. 17 (Colo.).

For the protection of the public welfare private employment agencies are subject to regulation under the police power. *Brazee* v. *Michigan*, 183 Mich. 259, 149 N. W. 1053; *Brazee* v. *Michigan*, 241 U. S. 340; *Price* v. *People*, 193 Ill. 114, 61 N. E. 844. Legislation under this power will be overthrown only when utterly unreasonable. *Rast* v. *Denman*, 240 U. S. 342, 357. See 32 HARV. L. REV. 173. A prohibition of fees has been held unreasonable. *Adams* v. *Tanner*, 244 U. S. 590. See 31 HARV. L. REV. 490. And the same has been